

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 14, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

010d-314

Oahu

Amend Prior Board Action of September 28, 2001, Agenda Item D-17, Grant of Perpetual, Non-Exclusive Easement to R.R. Midkiff Luakaha Family Limited Partnership and Elizabeth Midkiff Myers, Trustee Under that Certain Unrecorded Revocable Trust of Elizabeth Midkiff Myers dated April 24, 1989, as Amended, for Waterline, Reservoir and Fire Pump Station Purposes at Nuuanu, Oahu, TMK: 1st/ 1-9-07:02 por.

REMARKS:

This submittal concerns the addition of parcels to be benefited from the subject easement.

On September 28, 2001, under agenda item D-17, the Board approved the issuance of a perpetual, non-exclusive easement for waterline, reservoir and fire pump station purposes to the applicant. Subsequently, there was a change in the entity of the applicant. On January 12, 2007, agenda item D-4, the Board authorized the subject request to be applicable in the event of a change in the ownership, and added "electrical and telecommunication" to the character of use for the subject request. A copy of the map showing the State land and the applicant's parcel is attached as Exhibit A.

Easement documents were sent to the applicant for execution in May 2007, around the time that the condominium project was formed. Therefore, the easement document was never signed. Recently, the attorney representing the applicant notified the staff by an email (Exhibit B) that a condominium project is being developed on (1) 2-2-055:004, 009, 010, 011, 012, 013, 014 & 015 and Luakaha Mauka Community Association (Association) was formed " ... charged with ownership and responsibility of common property, including the fire protection system and related easements..." By the January 2007 approval mentioned above, the Board approved this change of applicant and staff will work with the Department of Attorney General on the documentation.

Further, the attorney requests adding parcels, which are the result of the newly developed condominium, as properties to be benefited from the subject easement. A copy of the tax map showing the newly created tax map keys is attached as Exhibit C. Staff recommends the Board authorize the easement to inure to the benefit of the parcels mentioned above.

RECOMMENDATION:

That the Board amend its prior action of September 28, 2001, agenda item D-17, by adding the following to the Recommendation Section: 1:

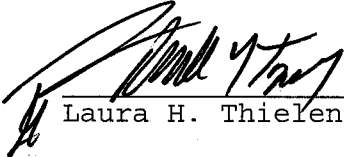
The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 2-2-055:004, 009, 010, 011, 012, 013, 014 & 015, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document.

Respectfully Submitted,



Al Jodar
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

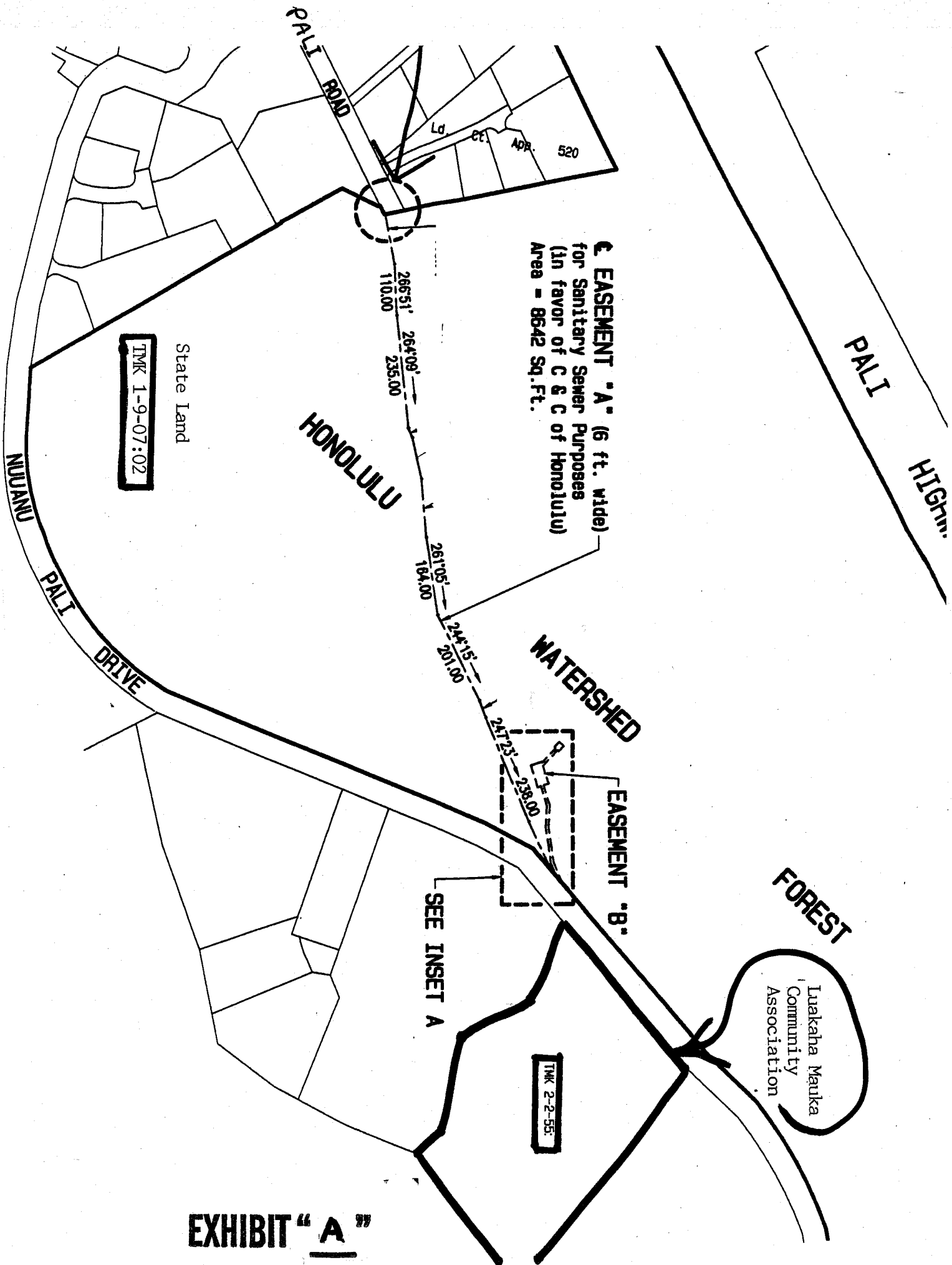


EXHIBIT "A"

010d-314



Christopher Harrison
<charrison@cades.com>

11/29/2007 11:05 AM

To "Al.H.Jodar@hawaii.gov" <Al.H.Jodar@hawaii.gov>

cc 'Bob Cunningham' <bcunningham@beltcollins.com>

bcc

Subject Request for Correction to Grant of Easement No. 28,869;
Ref. No. LOD 28,869

Al:

This message follows up on our discussion regarding the form of easement you forwarded to my associate Sheree Stewart (copy attached for your reference). I have done some background checking and am unable to determine why only TMK (1) 2-2-055-012 was identified as the appurtenant lot, since it is only one of the seven lots in the subject subdivision. The easement really should be appurtenant to all the lots because it serves all of them. Accordingly, I think we need to make a request to revise the grant of easement to identify all the lots (TMKs 2-2-055: 004, 009, 010, 011, 012, 013, 014, and 015) as appurtenant. For your reference I attach a copy of the tax map.

Also, while we are at it, we might as well revise the grantee to be the association. At the time the grant was drafted I do not think the association existed. However, the association has since been formed as Luakaha Mauka Community Association (see attached print out from the DCCA's website). The association owns the roadway lot, which is TMK (1) 2-2-055-015. The association is charged with ownership and responsibility for common property, including the fire protection system and related easements.

It looks to me that the following would be the necessary changes:

1. Change the grantee from the three entities currently identified to:

LUAKAHA MAUKA COMMUNITY ASSOCIATION, a Hawaii nonprofit corporation, whose address is 4151 Nuuanu Pali Drive, Honolulu, Hawaii 96817

2. Revise paragraph 5 to replace the reference to "tax map key no. (1) 2-2-055:012" with a reference to "tax map key nos. (1) 2-2-055: 004, 009, 010, 011, 012, 013, 014 and 015".

3. Change the reference to TMKs on the first page under the recordation header to read as follows:

Burdened Lot: Tax Map Key No. (1) 1-9-007:002 Por.

Benefited Lots: Tax Map Key Nos. (1) 2-2-055: 004, 009, 010, 011, 012, 013, 014 & 015

I think that should do it. Please contact me at your earliest convenience to discuss how to proceed.

Thank you for your help in this matter.

Best regards,
- Chris

Christopher T. Harrison
Cades Schutte LLP

Cades Schutte Building
1000 Bishop Street, Suite 1200

EXHIBIT "B"

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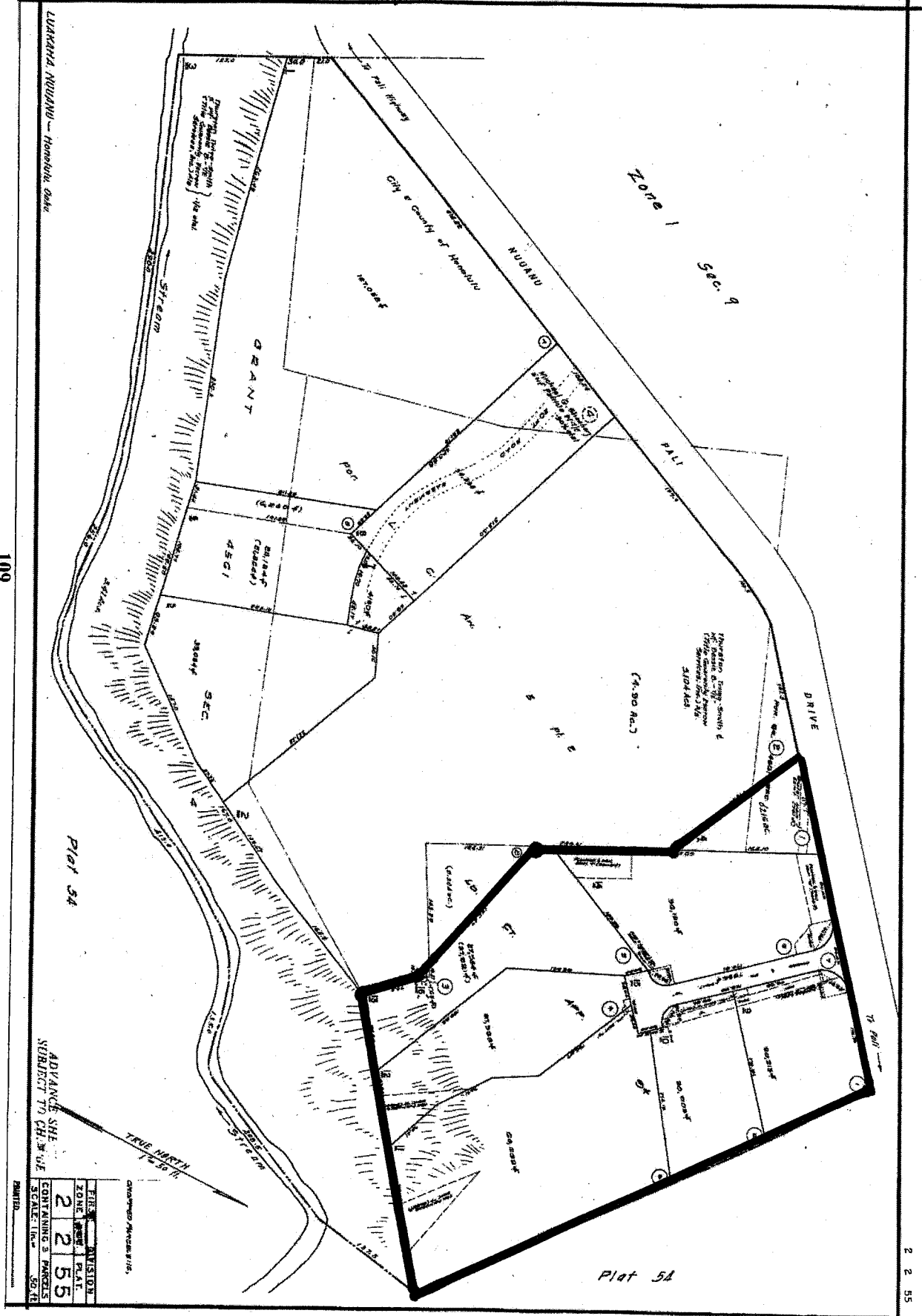


EXHIBIT "C"